

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION I

CACR06-268

MARQUIS BORDERS
APPELLANT

March 7, 2007
AN APPEAL FROM JEFFERSON COUNTY
CIRCUIT COURT [NO. CR 2000-923-1,
CR 2002-2-1]

V.

HON. BERLIN C. JONES, JUDGE

STATE OF ARKANSAS
APPELLEE

MOTION TO WITHDRAW DENIED;
REBRIEFING ORDERED

On November 15, 2005, the Jefferson County Circuit Court revoked the probation of Marquis Borders and sentenced him to a five-year term in the Arkansas Department of Correction. Appellant's attorney has filed a motion to withdraw, and his motion was accompanied by a no-merit brief, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(j), wherein counsel contends that all rulings adverse to his client are abstracted and discussed. However, we deny counsel's motion to withdraw because the judgment and commitment order reflects that appellant's probation was revoked for charges that were originally reduced or *nolle prossed*.

On September 27, 2000, the State filed a criminal information in case CR-2000-923-1, alleging that appellant committed second-degree battery and theft of property. Appellant

later entered a negotiated plea of guilty to third-degree battery, and the theft-of-property charge was *nolle prossed*. Appellant was placed on probation for one year and ordered to pay court costs and fines, perform 120 hours of community service, complete his GED, and complete a tour of the Arkansas Department of Correction.

On January 23, 2002, the State filed a petition to revoke appellant's probation, alleging that appellant was charged with fleeing and aggravated assault in case CR-2002-2-1, that he had not completed his community service, and that he was \$720 delinquent in payment of fees. Appellant pleaded guilty to the charges and received four years' probation. The original judgment and commitment order reflects that appellant's probation was revoked on the theft-of-property charge in CR-2000-923-1, despite the charge being previously *nolle prossed*. However, an amended order filed July 19, 2004, does not include the theft-of-property charge.

The State filed another petition to revoke on October 10, 2005, alleging that appellant was arrested on August 17, 2005, and charged with possession of a controlled substance. The petition also alleged that appellant failed to report in August 2005, was delinquent in paying fees, failed to complete community service, and failed to obtain a GED.¹ After taking evidence and hearing arguments from counsel, the court revoked appellant's probation and

¹The record also contains other petitions to revoke, including one filed on September 19, 2003, alleging that appellant had been arrested for possession of a controlled substance with intent to deliver, and one filed September 20, 2004, alleging that appellant committed first-degree murder and possession of a firearm by certain persons. The record reflects that the September 2003 petition was dismissed, but it does not show what action occurred, if any, on the September 2004 petition.

sentenced him to a five-year term in the Arkansas Department of Correction. The judgment and commitment order filed November 21, 2005, and the amended order filed November 23, 2005, reflect that appellant's probation was revoked on convictions for second-degree battery, theft of property, fleeing, and aggravated assault.

The final judgment and commitment order appears flawed. The original judgment and commitment order in CR-2000-923-1 reflects that appellant pleaded guilty to third-degree battery and that the theft charge was *nolle prossed*. The final judgment and commitment order shows revocations for *second*-degree battery and theft of property. It is unclear whether the final judgment and commitment order accurately reflects the offenses for which appellant was placed on probation. Accordingly, we deny counsel's motion and remand this case for rebriefing.

Motion to withdraw denied; rebriefing ordered.

GLOVER and VAUGHT, JJ., agree.